OVERSEA-CHINESE BANKING CORPORATION LTD.

v.

SARLIAN TRADING SDN. BHD

HIGH COURT SABAH & SARAWAK, KUCHING
PUAN ELIZABETH M. CHAPMAN JC
[ORIGINATING SUMMONS NO. KG. 147 OF 1992/(III)]
25 NOVEMBER 1995

CIVIL PROCEDURE: *Taxation - Appeal against decision of Senior Assistant Registrar - Preliminary objection raised - Failure to comply with O. 59 r. 34 RHC - Whether party dissatisfied with taxation must first apply to the Registrar for review.*

The defendant being dissatisfied with the decision of the Senior Assistant Registrar's on taxed costs appealed to the Judge in chambers against that decision. At the hearing the plaintiff raised a preliminary objection on the ground that the defendant had failed comply with O. 59 r. 34 of the Rules of the High Court 1980 (RHC) which *inter alia* states that a dissatisfied party may apply to the Registrar to review his decision in respect of an item allowed or disallowed.

The issue was whether the defendant was required to first apply to the Registrar for review.

Held:

[1] Order 59 r. 34 RHC clearly sets out the procedure and requirements which a dissatisfied party to taxation proceedings should comply with. In this case, the defendant had clearly failed to comply with the said provisions which requires the defendant to deliver to the Registrar and the plaintiff at the time of making this application his objections in writing specifying the item or amount objected to as well as the nature and grounds of objection, which allows the plaintiff to examine the grounds and deliver written answers within 14 days of the receipt of the objections. Litigation is governed by rules of procedure which are to be adhered to. Thus, the dissatisfied party must first apply to the Registrar to review his decision.

[Preliminary objection upheld].

Cases referred to:
Foo Loke Ying & Anor. v. Television Broadcasts & Ors. [1985] 2 MLJ 35 ***(foll)***
Muthuraku v. Kuala Lumpur Muncipality Workers Trade Union [1972] 1 MLJ 165 ***(foll)***

Legislation referred to:
Rules of High Court 1980, O. 56 rr. 1(i), 34, (1), (2), (3)

For the plaintiff - Tan Thiam Teck; M/s. Tan & Lia, Kuching
For the defendant - John Shek; M/s. John Shek & Co., Kuching

JUDGMENT

Elizabeth M. Chapman JC:

The defendant had, in this case, appealed to Judge in chambers against the decision of the Senior Assistant Registrar on the taxed costs. The plaintiff raised a preliminary objection at the onset of the hearing on the ground that the defendent, being dissatisfied with the Senior Assistant Registrar's allowance of certain items in the plaintiff's bill of costs, should have applied to the Senior Assistant Registrar to review her decision in respect of those items subjected to. In short, the plaintiff's contention is that the defendant had failed to comply with O. 59 r. 34 of the Rules of High Court 1980.

Order 59 r. 34 states:

> (1) Any party to any taxation proceeding who is dissatisfied with the allowance or disallowance in whole or in part of any item by the Registrar, or with the amount allowed by the Registrar in respect of any item, may apply for the Registrar to review his decision in respect of that item.
>
> (2) An application under this rule for review of the Registrar's decision may be made at any time within fourteen days after that decision or such shorter period as may be fixed by the Registrar.

Order 59 r. 34 clearly sets our the procedure and requirements by which a dissatisfied party to a taxation proceeding should comply with. Hence, each of the procedural steps provided for in the said rule is to be adhered to. This essentially means that the dissatisfied party must first apply to the Registrar to review his decision.

The Court should have regard to the side notes of O. 59 r. 34(1) which states "**Application to Registrar for review**" and side notes of O. 56 r. 1(i) which states "**Appeals from certain decisions of Registrar to Judge in chambers**". See: *Foo Loke Ying & Anor. v. Television Broadcasts & Ors.* [1985] 2 MLJ 35 where the Supreme Court took into account the marginal notes of s. 5 of the Copyright Act 1969, and where at p. 43 the Supreme Court stated:

> The Court however is not at liberty to treat words in a statute as mere tautology or surplusage unless they are wholly meaningless. On the presumption that Parliament does nothing in vain, the Court must endeavor to give significance to every word of an enactment, and it is presumed that if a word or phrase appears in a statute, it was put there for a purpose and must not be disregarded.

In *Muthuraku v. Kuala Lumpur Municipality Workers Trade Union* [1972] 1 MLJ 165 it was held that when a statute creates an obligation and enforces the performance in a specified manner, that performance cannot be enforced in any other manner.

In this instant case the defendant had clearly failed to comply with the provisions of O. 59 r. 34 Rules of High Court 1980, which requires the defendant to deliver to the Registrar and the plaintiff at the time of making this application his objections in writing specifying the item or amount which is objected to as well as the nature and grounds of objections. This, in turn, allows the plaintiff to examine the defendant's grounds of objections and deliver written answers to them within fourteen days of the receipt of the objections. Litigation is governed by rules of procedure and in this case the defendant had clearly not complied with the said rule.

For the reasons given above the preliminary objection is upheld. Furthermore, as the defendent has, to-date, not applied to the Senior Assistant Registrar to review her decision and deliver a copy of the objections in writing to the plaintiff within fourteen days, as specified under O. 59 r. 34 subrule (2) and subrule (3) the defendant is clearly out of time. Hence the certificate of the Registrar is conclusive as to the amount therein.